

## **REMARKS / ARGUMENTS**

### **I. General Remarks and Disposition of the Claims**

Please consider the application in view of the following remarks. Applicants thank the Examiner for his careful consideration of this application.

Claims 1-3, 8-11, 13-31, 35-41, and 43-65 are pending in this application. Claims 31, 35-41, 43-46, and 51-56 are rejected. Claims 1-3, 8-11, 13-30, and 57-65 are allowed. Claims 47-50 are objected to. Claims 3, 14, 16, 27-31, 35, 44, 45, and 56 have been amended herein. These amendments are supported by the specification as filed. All the amendments are made in a good faith effort to advance the prosecution on the merits of this case. It should not be assumed that the amendments made herein were made for reasons related to patentability. Applicants respectfully request that the above amendments be entered and further request reconsideration in light of the amendments and remarks contained herein.

### **II. Remarks Regarding Objections to the Claims**

Claim 31 stands objected to. With regards to this objection, the Office Action states:

Claim 31 is objected to because of the following informalities: The preamble of claim 31 is still inconsistent with the rest of the claim and its dependents. The method being claimed is not a method of stimulating a *single* section of a subterranean formation, but *multiple* segments. Therefore, the preamble must either recite -A method of stimulating multiple section of a subterranean formation--, or --A method of stimulating a subterranean formation--. Either would be correct. The current preamble cannot be correct. Appropriate correction is required.

(Office Action at 2.) Applicants have amended claim 31 in accordance with the Examiner's request. Therefore, Applicants respectfully request the withdrawal of this objection.

### **III. Remarks Regarding Rejections Under 35 U.S.C. § 102**

Claims 31, 35-41, 44-46, and 51-56 stand rejected under 35 U.S.C. § 102(b) as being anticipated by European Patent No. WO 03/048508 A1, issued to Akinlade et al. (hereinafter "*Akinlade*"). With respect to this rejection the Office Action states:

With regard to claim 31, Akinlade discloses a method of stimulating a section of a subterranean formation comprising the steps of providing a drill string (1) that comprises a stimulation tool (see figures 3 and 4) interconnected as a part of the drill string and a drill bit (8) attached at an end of the drill string, drilling at

least a portion of the wellbore using the drill string, wherein the wellbore penetrates the subterranean formation, and stimulating multiple sections of the formation using the stimulation tool as the drill string is removed from the well bore.

With regards to claims 35, 44, and 45, Akinlade teaches a chemical wash operation using an aqueous fluid (see page 4, lines 8-18).

With regards to claims 36 and 46, Akinlade discloses a jet-forming nozzle port (46).

With regards to claims 37 and 40, Akinlade teaches positioning the stimulation tool next to a first section of the formation. This drilling fluid comprises a cleaning fluid.

With regard to claim 38, Akinlade teaches continuing drilling after stimulating, which would comprise pumping drilling fluid into the drill string, and then into the annulus.

With regard to claim 39, Akinlade discloses a packer (14) for shutting the annulus.

With regard to claim 41, Akinlade discloses using drilling fluid during drilling.

With regard to claim 51-53, Akinlade teaches using a mechanical-activation mechanism to open a port (44), the mechanical-activation mechanism comprising a sliding sleeve.

With regard to claim 54, Akinlade teaches stimulating a second section of the formation by positioning the tool next to the formation and flowing a stimulation fluid through the tool.

With regard to claims 55 and 56, Akinlade teaches sealing the formation which was treated (see page 4, lines 8-18).

(Office Action at 3-4.) Applicants respectfully disagree.

At the outset, Applicants note that the Examiner had indicated that *Akinlade* anticipates Applicants' claimed invention under 35 U.S.C. § 102(b) despite that *Akinlade* published less than one year prior to Applicants' filing date. Nevertheless, Applicants respectfully submit that *Akinlade* does not disclose each and every limitation of claims 31, 35-41, 44-46, and 51-56, as amended, as required to anticipate these claims under 35 U.S.C. § 102(b) or 35 U.S.C. § 102(e). See MPEP § 2131.

In particular, with respect to as-amended independent claim 31, *Akinlade* fails to disclose "[a] method of stimulating a subterranean formation comprising the steps of . . . stimulating multiple sections of the subterranean formation using the stimulation tool as the drill string is removed from the well bore." Rather, *Akinlade* discloses treating a subterranean

formation with a treatment fluid that “is suitably a treatment chemical which can seal fractures or pores after curing or after a reaction with the formation rock.” *Akinlade*, p. 4, ll. 9-13. In this manner, the treatment fluid of *Akinlade* would “suppress fluid communication between the borehole and the treatment zone after treatment.” *Id.* at p. 4, ll. 4-8. The treatment fluid disclosed in *Akinlade*, however, would not stimulate the subterranean formation, and nowhere in *Akinlade* is stimulating a subterranean formation disclosed. As such, *Akinlade* does not anticipate this claim.

Therefore, Applicants respectfully assert that independent claim 31 is not anticipated by *Akinlade*. Moreover, claims 35-41, 44-46, and 51-56 depend, either directly or indirectly, from independent claim 31. All these dependent claims include all the limitations of independent claim 31, and thus are allowable for at least the reasons cited above with respect to independent claim 31. See 35 U.S.C. § 112 ¶ 4 (2004). Accordingly, Applicants respectfully request withdrawal of this rejection with respect to claims 31, 35-41, 44-46, and 51-56.

#### **IV. Remarks Regarding Rejections Under 35 U.S.C. § 103**

Claims 43 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Akinlade*. With respect to this rejection, the Office Action states:

Akinlade fails to disclose the stimulation fluid being an unweighted drilling fluid. It would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have used, in conjunction with Akinlade's device, a stimulating fluid with a chemistry similar to that of drilling fluid, said fluid being an unweighted drilling fluid, as the examiner hereby takes official notice that it was notoriously conventional in the art to have used drilling fluids with a multitude of additives to both stimulate formations as well as prevent drilling fluid loss into formations.

(Office Action at 4-5.) Applicants respectfully disagree.

In order for a reference or combination of references to form the basis for a rejection under § 103(a), the reference or combination of references must teach or suggest all of the elements of the claim. As discussed above in Section III, *Akinlade* fails to teach each and every limitation of independent claim 31. Nor has any motivation or other apparent reason known to a person of skill in the art for such a modification been provided. Claim 43 depends indirectly from claim 31 and therefore includes all the limitations of that independent claim. Thus, claim 43 is patentable over *Akinlade* for at least the reasons cited above in regard to claim

31. *See* 35 U.S.C. § 112 ¶ 4 (2004). Accordingly, for at least these reasons, Applicants respectfully request withdrawal of this rejection with respect to claim 43.

**V. Allowable Subject Matter**

In the Office Action, the Examiner noted that “Claims 1-3, 8-11, 13-30, and 57-65 [are] allowed” and that claims 47-50 “would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.” (Office Action at 5.) Applicants gratefully acknowledge the Examiner’s indication that claims 1-3, 8-11, 13-30, and 57-65 are allowable over the art of record and that claims 47-50 would be allowable if rewritten in independent form. Although allowed claims 3, 14, 16, and 27-30 have been amended herein, these amendments only correct formal matters in the claims. As such, Applicants maintain that claims 3, 14, 16, and 27-30 remain patentable as amended. Since Applicants have traversed the rejections of claim 31, which is the base claim of claims 47-50, Applicants respectfully submit that claims 47-50, as presented herein, are allowable as well.

**VI. No Waiver**

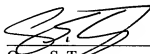
All of Applicants’ arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the cited references. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner’s additional statements, such as, for example, any statements relating to what would be obvious to a person of ordinary skill in the art.

**SUMMARY**

In light of the above amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections. Applicants further submit that the application is now in condition for allowance, and earnestly solicit timely notice of the same. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone, facsimile, or electronic mail.

Applicants believe that no fees are due in association with the filing of this response. Should the Commissioner deem that any fees are due, including any fees for extensions of time, Applicants respectfully request that the Commissioner accept this as a Petition Therefor, and direct that any additional fees be charged to Baker Botts, L.L.P.'s Deposit Account No. 02-0383, Order Number 063718.0478.

Respectfully submitted,



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